

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CHARLES RAY HICKS,  
Petitioner,

V.

JOHN E. WETZEL, Secretary,  
Pennsylvania Department of Corrections;  
ROBERT GILMORE, Superintendent of  
the State Correctional Institution at Greene;  
and MARK GARMAN, Superintendent of  
the State Correctional Institution at  
Rockview,  
Respondents.

No. 1:17-CV-1969

(Chief Judge Conner)

# THIS IS A CAPITAL CASE

**PETITIONER’S MOTION TO STAY THE FEDERAL PROCEEDINGS OR, IN THE  
ALTERNATIVE, DISMISS WITHOUT PREJUDICE TO ALLOW PETITIONER TO  
EXHAUST FEDERAL CLAIMS FOR RELIEF IN STATE COURT**

Petitioner, Charles Ray Hicks, through counsel, hereby moves to hold these federal proceedings in abeyance to allow him to expeditiously exhaust his federal claims for relief in state court and, in support thereof, states the following:

1. On November 14, 2014, following a jury trial in the Monroe County Court of Common Pleas, Mr. Hicks was convicted of one count of first-degree murder and related charges. *Commonwealth v. Hicks*, CP-45-CR-0000391-2008 (Monroe C.P.). On November 18, 2014, the jury entered a death verdict. On January 6, 2015, the court formally imposed sentence. The Pennsylvania Supreme Court

affirmed the convictions and death sentence on March 28, 2017. *Commonwealth v. Hicks*, 156 A.3d 1114 (Pa. 2017). Mr. Hicks' timely petition for writ of certiorari in the United States Supreme Court was denied on October 2, 2017. *Hicks v. Pennsylvania*, No. 16-9657, Order (U.S. Oct. 2, 2017).

2. On November 30, 2017, this Court granted Mr. Hicks' motion for leave to proceed *in forma pauperis*, appointed the Capital Habeas Unit of the Federal Public Defender Office for the Middle District of Pennsylvania to represent Mr. Hicks in proceedings challenging his convictions and sentence of death under Section 2254, and ordered counsel to file a status report apprising the Court of the procedural posture of Mr. Hicks' state court proceedings and any other pertinent matters on or before May 29, 2018 and every 45 days thereafter. Doc. 3.

3. On February 12, 2018, the Monroe County Court of Common Pleas entered an order granting Mr. Hicks leave to proceed *in forma pauperis*, staying his execution through the conclusion of all PCRA proceedings, and appointing James Swetz, Esquire, to represent him in his PCRA proceedings.

4. On July 20, 2018, this Court issued an Order directing Mr. Hicks to file his Habeas Petition on or before October 2, 2018. Doc. 8. After the DOC implemented new legal mail and legal visit document exchange policies in September 2018 that prevented counsel from engaging in privileged communications/consultations with Mr. Hicks (*see* Doc. 16), this Court stayed the

proceedings (Doc. 21). After discussions with counsel for the DOC, undersigned counsel was able to provide Mr. Hicks with documents during her December 10, 2018 legal visit. Doc. 23 at 5.

5. While counsel was able to conduct document exchanges through December and early January, on January 18, 2018, counsel was informed by staff at SCI-Greene that the policy had changed back to a system in which any documents counsel provided to Mr. Hicks through document exchange during legal visits would be processed similar to legal mail, i.e., copied/scanned and the copy provided to the client. *See* Doc. 13 ¶ 6. Subsequent communication with DOC counsel confirmed that is the policy and procedure for all document exchanges during legal visits.

6. Counsel's request for leave to file Mr. Hicks' Habeas Petition on February 1, 2019 was granted on December 18, 2018. Doc. 24. Mr. Hicks filed his Habeas Petition this date.

7. Mr. Hicks' counseled Amended PCRA Petition is currently due on May 31, 2019. *Commonwealth v. Hicks*, No. CP-45-CR-0000391-2008 (Monroe CCP, Order January 24, 2019).

8. Petitioner has raised numerous potentially-meritorious, unexhausted federal constitutional claims for relief that must be presented to the state courts. Accordingly a stay of the federal proceedings or, in the alternative, dismissal without prejudice is warranted.

WHEREFORE, Mr. Hicks, through counsel, respectfully requests that this Court grant his motion to hold these federal proceedings in abeyance or, in the alternative, dismiss without prejudice, to allow him to expeditiously exhaust his federal claims for relief in state court.

Respectfully submitted,

s/Kelly D. Miller

KELLY D. MILLER, ESQUIRE

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Dated: February 1, 2019

**CERTIFICATE OF SERVICE**

I, Kelly D. Miller, hereby certify that on this date I caused the foregoing document to be served on the following person at the location and in the manner indicated below, which satisfies the requirements of the Federal Rules of Civil Procedure:

**VIA FIRST-CLASS MAIL**

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Dated: February 1, 2019